

REMARKS

Reconsideration of this application is respectfully requested. Claims 47, 51, and 52 are pending in this application.

Applicants thank the Examiner for the courtesy extended during the interview held on December 1, 2005, in which the Examiner agreed that the written description rejection would be withdrawn and applicants agreed to work to file a Terminal Disclaimer to overcome the double patenting rejection.

Finality of Office Action is PREMATURE

The Examiner made the Office Action final. (Office Action at 3.) However, the finality of the Examiner's action was **PREMATURE**. M.P.E.P. § 706.07 states:

Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

In the Office Action dated December 5, 2005, the Examiner introduced a *new ground of rejection* of claim 47 under the judicially created doctrine of obviousness-type double patenting. This rejection was neither necessitated by applicants' amendment of the claims nor based on information submitted in an information disclosure statement. Accordingly, the Examiner's action should not have been final, and applicants respectfully request that the **FINALITY** of the Office Action dated December 5, 2005, be **WITHDRAWN**.

Obviousness-type double patenting rejection

Claims 47, 51, and 52 were rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-6 of U.S. Patent No. 6,627,395.

Solely to expedite prosecution of this application and not in acquiescence to this rejection, applicants submit herewith a Terminal Disclaimer from each of the assignees over U.S. Patent No. 6,627,395. Accordingly, applicants respectfully request withdrawal of the rejection.

Applicants respectfully submit that this application is in condition for allowance. In the event that the Examiner disagrees, he is invited to call the undersigned to discuss any outstanding issues remaining in this application in order to expedite prosecution.


Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: June 5, 2006

By: _____


Salvatore J. Arrigo

Reg. No. 46,063

Telephone: 202-408-4160

Facsimile: 202-408-4400

E-mail: arrigos@finnegan.com